

**THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TNT AMUSEMENTS, INC., d/b/a)	
PLAY-MOR COIN-OP,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:23-cv-00330-JAR
)	
TORCH ELECTRONICS, LLC,)	
et al.,)	
)	
Defendants.)	

**PLAINTIFF TNT AMUSEMENTS, INC.’S
MOTION TO COMPEL THE EXPERT TESTIMONY OF NICK FARLEY**

Plaintiff TNT Amusements, Inc., d/b/a Play-Mor Coin-op (“TNT”) by and through its undersigned counsel, hereby move the Court to compel testimony from Defendants’ proffered expert witness Nick Farley regarding the programming of certain gaming devices (the “Torch Devices”) manufactured by non-party Banilla Games, Inc. (“Banilla”) and distributed in Missouri by Defendants Torch Electronics, LLC, Steven Miltenberger, and Sondra Miltenberger (together, “Defendants”), which Mr. Farley previously refused to testify to in his deposition. In support of its motion, TNT states as follows:

1. TNT deposed Defendants’ expert witness Nick Farley on December 12, 2023.
2. At the deposition, Mr. Farley refused to answer TNT’s questions about the source code and database code of the Torch Devices because he wrongly believed that a confidentiality agreement he signed with Banilla, the manufacturer of the devices, prevented him from answering.
3. The confidentiality agreement provided to TNT by Defendants’ counsel does not prohibit Mr. Farley from answering questions relating to information independently obtained by

TNT and presented to him in his deposition; instead, it merely requires him not to disclose confidential information obtained from Banilla.

4. Federal Rule of Civil Procedure 30(c)(2) states that a deponent must answer all deposition questions, with only limited exceptions in instances in which it is necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion alleging unreasonable behavior by opposing counsel. *See, e.g., Agxplore Int'l, LLC v. Shelley*, No. 1:12-CV-16 SNLJ, 2013 WL 121393, at *1 (E.D. Mo. Jan. 9, 2013) (enumerating the limited exceptions to when a deponent must answer); *CitiMortgage, Inc. v. Chicago Bancorp, Inc.*, No. 4:12-CV-00246 CDP, 2013 WL 3946116, at *4 (E.D. Mo. July 31, 2013).

5. None of the above exceptions to Rule 30(c)(2) apply to the instant case.

6. In such instances in which deponents had no grounds to decline to answer relevant questions, courts have commonly granted motions to compel and ordered the redeposition of witnesses. *See, e.g., Armstrong v. Hussmann Corp.*, 163 F.R.D. 299, 304 (E.D. Mo. 1995).

7. Prior to filing the instant motion, counsel for TNT Richard Finneran and Mary Grace Warren conferred via videoconference with counsel for Torch Aaron Craig and Chandler Carr on Wednesday, January 31, 2014. The parties were unable to resolve their disagreement regarding Mr. Farley's refusal to answer questions put to him during his deposition.

8. In further support of its motion, TNT submits its memorandum in support and supporting exhibits, which are being filed contemporaneously with this motion and incorporated by reference herein.

WHEREFORE TNT respectfully requests that this Court grant its motion to compel the testimony of Nick Farley and grant such other relief as the Court deems just and proper.

Dated: February 5, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served via ECF on February 5, 2024,
upon all counsel of record.

/s/ Richard E. Finneran